

(Per R.K.Abichandani, J.)

The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court under Section 27 (1) of the Wealth Tax Act, 1957:

"Whether the Appellate Tribunal is right in law and on facts in directing the Wealth-tax Officer to value the unquoted shares of M/s. Mehta Parikh & Co. by holding that the advance tax paid under the Income Tax Act, 1961 and shown on the asset side of the balance sheet of the said company cannot be deducted from the tax payable in determining whether the provision for taxation is in excess over the tax payable with reference to the book profit in accordance with the law applicable thereto within the meaning of Clause (ii) (e) of Explanation 2 to Rule 1-D of the Wealth Tax Rules, 1957 ?"

2. The Tribunal dismissed the appeal of the Revenue holding that there was no substance in the objection raised by the Department in view of the decision of this High Court in the case of ASHOK K. PARIKH v. COMMISSIONER OF WEALTH TAX reported in 129 ITR 46. In Ashok K. Parikh (supra), in which this Court had taken a view while construing Clauses (i) (a) and (ii) (e) of Explanation II to Rule 1-D that, for the purpose of computation of the market value of the equity shares of a company, the advance tax paid under Section 210 of the Income Tax Act, 1961 and shown on the assets side of the balance sheet of the company, cannot be deducted from the tax payable, in determining whether the provision for taxation is in excess over the tax payable with reference to the book profits in accordance with the law applicable thereto within the meaning of Clause (ii) (e) of Explanation II to Rule 1-D of the said Rules.

3. The dispute centres around the treatment to be given to the advanced tax paid shown on the assets side of the balance-sheet of the company while working out the value of the equity shares on break-up value method. At the time of making of Reference, this question was pending before the Apex Court. Now, we have the benefit of the decision of the Apex Court in BHARAT HARI SINGHANIA v. C.W.T. reported in 207 ITR 1. The Supreme Court while construing the provisions of Rule 1-D of the Wealth Tax Rules, 1957, held that the said Rule was required to be followed in every case where unquoted equity shares of a company (other than an investment company or a managing agency company) have to be valued

and that all the authorities under the Act including the Valuation Officer were bound by the said Rule. It was further held that while valuing the unquoted equity shares under Rule 1-D, no deductions on account of capital gains tax which would have been payable in case the shares were sold on the valuation date can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. It was held that Rule 1-D was exhaustive on the subject.

4. The Supreme Court while construing the provisions of the said Rule 1-D read with Explanation II (ii) (e) of the said Rules held that, truly speaking, the advance tax paid is not really an asset, but, the proforma of balance sheet in Schedule VI to the Companies Act requires it to be shown as such. It was held that what Clause (i) (a) of the said Explanation did was to remove the said amount from the list of assets for the purpose of Rule 1-D. It is then that Clause (ii) (e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. The advance tax paid had already gone out of the profits and been debited in the account books of the company. It was held that this was the true function of both the sub-clauses. The Supreme Court in the process accepted the view of Andhra Pradesh, Karnataka, Punjab & Haryana High Courts and differed from the view taken by the Gujarat High Court in C.W.T. v. ASHOK K. PARIKH (supra).

5. In view of the decision of the Supreme Court in BHARAT HARI SINGHANIA v. C.W.T. (supra), we hold that the Tribunal was in error in directing the Wealth Tax Officer to value the unquoted shares of M/s. Mehta Parikh & Company by holding that the advance tax paid under the Income-tax Act, 1961 and shown on the asset side of the balance sheet of the said company cannot be deducted from the tax payable in determining whether the provision for taxation is in excess over the tax payable with reference to the book profit in accordance with the law applicable thereto within the meaning of Clause (ii) (e) of Explanation 2 to Rule 1-D of the Wealth Tax Rules, 1957. The question referred to us is, therefore, answered in the negative in favour of the Revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

Sd/-

[KMG Thilake]

\$\$\$\$\$\$\$\$\$\$